



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 21 2005

OFFICE OF  
CIVIL RIGHTS

**RETURN RECEIPT REQUESTED**  
**Cert. No. 7003 2260 0005 1961 1674**

**In Reply Refer to:**  
**EPA OCR File No. 5R-02-R9**

Del M. Caudle  
Executive Director  
Maricopa County Local Emergency Planning Committee  
2035 North 52<sup>nd</sup> Street  
Phoenix, Arizona 85008

**Re: PARTIAL ACCEPTANCE OF ADMINISTRATIVE COMPLAINT**

Dear Mr. Caudle:

This is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is partially accepting for investigation an April 19, 2002, administrative complaint filed by Concerned Residents of South Phoenix, Inc. (CRSP). In addition, OCR is seeking further clarification on some of the allegations in the complaint. In the complaint, CRSP alleged that the Maricopa County Local Emergency Planning Committee (MCLEPC) and the Arizona State Emergency Response Commission (AZSERC) violated Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.* (Title VI), and EPA's regulations implementing Title VI at 40 C.F.R. Part 7. Specifically, the complaint alleged that AZSERC and MCLEPC, in their administration of the Emergency Planning and Community Right-To-Know Act (EPCRA), discriminated against Latinos and African Americans in South Phoenix, Arizona.

Title VI prohibits discrimination on the basis of race, color, or national origin by programs and activities of recipients of Federal financial assistance. Pursuant to EPA's Title VI implementing regulations, OCR conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's Title VI regulations. 40 C.F.R. § 7.120. First, the complaint must be in writing. Second, it must describe an alleged discriminatory act that violates EPA's Title VI regulations (*i.e.*, an alleged discriminatory act based on race, color, or national origin). Third, it must be filed within 180 days of the alleged discriminatory act. OCR considers a complaint filed on the date it is received by EPA or by another Federal agency. Finally, because EPA Title VI regulations apply to applicants or

recipients of EPA assistance, the complaint must identify an EPA recipient or applicant that committed the alleged discriminatory act. 40 C.F.R. § 7.15. Complaints may be filed by an authorized representative. 40 C.F.R. § 7.120(a).

#### **A. Allegations Accepted for Investigation**

OCR is accepting for investigation two allegations of intentional discrimination. The first allegation is that MCLEPC intentionally discriminated against Latinos and African Americans by failing to respond to questions that CRSP, an organization “almost entirely made up of African-American and Latino members,” submitted to MCLEPC in March 2002. The second allegation is that MCLEPC intentionally discriminated against Latinos and African Americans by removing a discussion of a toxic fire from the April 3, 2002, meeting agenda. This fire, which occurred in August 2000, involved the Central Garden and Supply Warehouse (Central Garden). CRSP also alleged that MCLEPC refused to place discussion of the Central Garden fire in the agenda for the following MCLEPC meeting.

These allegations satisfy the jurisdictional criteria in EPA’s Title VI regulations. First, the complaint is in writing. 40 C.F.R. § 7.120(b)(1). The complaint is in the form of a letter from CRSP, dated April 19, 2002. OCR received a facsimile copy of the complaint on April 19, 2002, and received the complaint letter by U.S. mail on April 29, 2002.

Second, the complaint describes alleged discriminatory acts that violate EPA’s Title VI regulations. 40 C.F.R. § 7.120(b)(1). The complaint alleges that MCLEPC has intentionally discriminated against Latinos and African Americans by failing to respond to CRSP’s questions about the Central Garden fire. The complaint also alleges that MCLEPC intentionally discriminated against Latinos and African Americans by removing discussion of the fire from the April 3, 2002, MCLEPC meeting agenda, and by refusing to place discussion of the fire in the agenda for the next MCLEPC meeting.

Third, the complaint has been timely filed within 180 days of the alleged discriminatory acts described in the preceding paragraph. 40 C.F.R. § 7.120(b)(2). These allegations involve acts that occurred in March 2002, and on April 3, 2002. Thus, these acts occurred within 180 days of April 19, 2002, the date on which CRSP filed the complaint.

Finally, the complaint identifies an EPA recipient that allegedly committed the discriminatory act. 40 C.F.R. § 7.15. The complaint specifically names MCLEPC, which has acknowledged that it received financial assistance from EPA indirectly through AZSERC.

#### **B. Allegations for Which Further Clarification is Needed**

OCR will need clarification regarding CRSP’s remaining two allegations. The first concerns MCLEPC. CRSP has alleged numerous failures by MCLEPC to comply with EPCRA requirements, including allegedly failing to address or update required elements of its EPCRA

Section 303 emergency plan. CRSP believes that MCLEPC's failure to comply with EPCRA has resulted in Latinos and African Americans suffering "disproportionate risks and impacts" from releases of hazardous chemicals and air pollution, in violation of EPA's Title VI regulations at 40 C.F.R. Part 7.

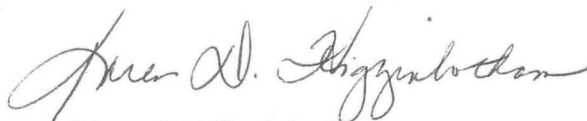
In order to properly investigate these allegations, OCR needs specific dates of MCLEPC's alleged failures to comply with EPCRA. For example, clarification on any specific EPCRA deadlines with which MCLEPC failed to comply would be helpful. In addition, OCR needs to know what "risks and impacts" CRSP believes Latinos and African Americans in South Phoenix have disproportionately suffered as a result of MCLEPC's actions.

CRSP also alleged that AZSERC "failed in its supervisory and oversight duties of the MCLEPC," as required by Sections 301 and 303(e) of EPCRA. CRSP alleged that, because of these supervisory and oversight failures, "AZSERC is in part responsible" for MCLEPC's alleged violations of EPA's Title VI regulations. Thus, CRSP believes that AZSERC's alleged actions or omissions have resulted in a disparate impact under EPA's Title VI regulations.

In order to properly investigate these allegations, OCR needs allegations of specific supervisory and oversight failures and specific dates on which AZSERC failed to oversee or supervise MCLEPC. OCR also needs to know exactly how these alleged failures resulted in discriminatory impacts. For example, if CRSP believes that AZSERC failed to comply with specific deadlines that entailed supervision or oversight of MCLEPC's EPCRA implementation, what information is CRSP relying on and how did this result in discrimination. In addition, what harm does CRSP believe Latinos and African Americans in South Phoenix have disproportionately suffered as a result of AZSERC's actions.

If you have any questions, please contact Mike Mattheisen in OCR by telephone at (202) 343-9678, or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460-1000.

Sincerely,



Karen D. Higginbotham  
Director

cc: Steve Brittle  
Concerned Residents of South Phoenix, Inc.  
6205 S. 12<sup>th</sup> St.  
Phoenix, Arizona 85040

Daniel Roe, Executive Director  
Arizona Emergency Response Commission  
5636 East McDowell Road  
Phoenix, Arizona 85008

Stephen G. Pressman, Associate General Counsel  
Civil Rights Law Office (MC 2399A)

Jo Ann Asami, Title VI Coordinator  
EPA Region 9



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**In Reply Refer to:**  
**EPA OCR File No. 5R-02-R9**

Daniel Roe  
Executive Director  
Arizona Emergency Response Commission  
5636 East McDowell Road  
Phoenix, Arizona 85008

**Re: PARTIAL ACCEPTANCE OF ADMINISTRATIVE COMPLAINT**

Dear Mr. Roe:

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Steve Brittle  
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6205 S. 12<sup>th</sup> St.  
Phoenix, Arizona 85040

Stephen G. Pressman, Associate General Counsel  
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Steve Brittle  
Concerned Residents of South Phoenix, Inc.  
6205 S. 12<sup>th</sup> St.  
Phoenix, Arizona 85040

**Re: PARTIAL ACCEPTANCE OF ADMINISTRATIVE COMPLAINT/  
LETTER OF CLARIFICATION**

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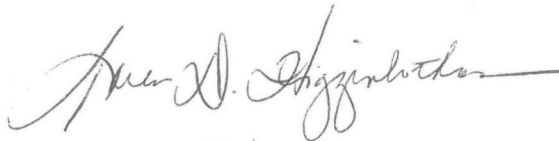
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Please submit the requested information within 30 days of your receipt of this letter. Failure to provide the requested clarification within this time will result in EPA's rejection of these allegations.

If you have any questions, please contact Mike Mattheisen in OCR by telephone at (202) 343-9678, or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460-1000.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen D. Higginbotham", with a long horizontal flourish extending to the right.

Karen D. Higginbotham  
Director

cc: Del M. Caudle, Executive Director  
Maricopa County Local Emergency Planning Committee  
2035 North 52<sup>nd</sup> Street  
Phoenix, Arizona 85008

Daniel Roe, Executive Director  
Arizona Emergency Response Commission  
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